

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

LASERTONE CORP.,

Respondent.

**Docket No. FMCSA-2009-0184¹
(Eastern Service Center)**

ORDER APPOINTING HEARING OFFICER

1. Background

On March 11, 2009, the New York Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, Lasertone, Corp., proposing a civil penalty of \$5,000 for one alleged violation of 49 CFR 385.325(c), for operating a commercial motor vehicle in interstate commerce on or after the effective date of an out-of-service order issued for failing to submit to a new entrant safety audit.²

Although the Reply to the Notice of Claim is not in the docket, it appears that Respondent requested an informal hearing, only to be told by letter dated May 26, 2009, that FMCSA no longer offered informal hearings as a means of administrative adjudication. By letter dated July 2, 2009, Respondent expressed disappointment in this decision, especially because the Notice of Claim specifically listed the informal hearing as an administrative adjudication option. Upon learning that the informal hearing –

¹ The prior case number of this matter was NY-2008-0217-US0569.

² See Attachment 2 to letter from Field Administrator's Counsel, dated July 7, 2009 (Claimant's Consent to Binding Arbitration).

which Respondent had selected as its administrative adjudication option – was not available, it accepted binding arbitration as an alternative. On July 7, 2009, Claimant, the Field Administrator for the Eastern Service Center, FMCSA, indicated that he did not object to the request for binding arbitration.

2. Discussion

On June 7, 2010, FMCSA suspended its informal hearing procedure, stating that although it will not entertain new requests for informal hearings, “proceedings where an informal hearing procedure has already been requested will continue to be processed....”³ Because Respondent’s request for an informal hearing preceded the publication date of the suspension, and did so by more than one year, Respondent’s request is granted. The request for binding arbitration, as the alternative option, is moot.⁴

3. Appointment of Hearing Officer

In accordance with 49 CFR 386.16(b)(1) and 49 CFR 386.16(b)(4)(i)(A), a hearing officer is hereby appointed to preside over this matter.⁵ Within 45 days following the conclusion of the informal hearing, the hearing officer will prepare a written report to the Assistant Administrator containing findings of fact and a


³ See 75 Fed. Reg. 32242, June 7, 2010.

⁴ In his July 7, 2009 letter, Claimant contended that Respondent had admitted the violation. Although an admission would have been necessary for an assignment to binding arbitration, Respondent’s July 2, 2009 letter, which opted for binding arbitration as the next best alternative to an informal hearing, contained no admission.

⁵ A Notice assigning this matter to a specific hearing officer will be issued shortly.

recommended disposition of the matter.

It Is So Ordered.



Rose A. McMurray

Assistant Administrator

Federal Motor Carrier Safety Administration

6.29.10

Date

CERTIFICATE OF SERVICE

This is to certify that on this 1 day of July, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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